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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,720	01/16/2002	Gerard Bonifacio	33900-95	7711

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EXAMINER

CHOP, ANDREA MARIE

ART UNIT

PAPER NUMBER

3677

DATE MAILED: 11/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. <b>10/050,720</b>	Applicant(s) <b>Bonifacio</b>
Examiner <b>Andrea Chop</b>	Art Unit <b>3677</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on (7/1/02 IDS)

2a)  This action is **FINAL**.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 1-13 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-13 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1)  Notice of References Cited (PTO-892)

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3

4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Notice of Art Unit Number Change***

1. Please note that the Art Unit number associated with this Application has changed from 3628 to 3677.

### ***Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. § 119, which papers have been placed of record in the file.

### ***Drawings***

3. It should be noted that the drawings have not yet been reviewed by a PTO draftsman. The drawings will be reviewed upon allowance of the application and Applicant will be apprised of their status accordingly.

***Claim Rejections - 35 USC § 112***

4. Claims 1-13 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As concerns the claims in general, the various Greek reference characters must be enclosed within parentheses.

As concerns Claims 8-10, with respect to the use of the term "means", i.e., "fastening means", since "means for" language is not present in the claim, the Examiner is treating these particular claim limitations as *not* invoking 112 6th paragraph; if Applicant's intention is to invoke 112 6th paragraph, Applicant should amend the claim to recite the proper language "means for".

As concerns Claim 11, line 11, "said fastening portion" and "the first end portion" are indefinite, since multiple fastening and first end portions have been defined and it is not clear which are being referred to. Also, "said right bend" and "said left bend" lack antecedent basis.

As concerns Claim 13, line 2, it appears that --a-- should be inserted after "comprise" for grammatical reasons.

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***Claim Rejections - 35 USC § 101***

5. Claims 1, 2 and 11 and their dependent claims are rejected under 35 U.S.C. 101, since these claims positively recite a portion of the human body, i.e., the ear lobe and cheek, and as such, are drawn to nonstatutory subject matter. Applicant should amend the claims to remove positive recitation of the human body; such amended language can include functional phrases such as "adapted for", "attachable to", etc.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2, 4 and 7-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Riley et al. US 271,121.

Riley shows the claimed invention in Fig. 4. Riley teaches the equivalence of having fastening means inside and outside of a ring part (Fig. 3 and Fig. 4). The use of multiple earrings is known in the art.

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***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3, 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riley et al. US 271,121.

Riley shows the claimed invention; in regards to the specific angles claimed, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to have the angles claimed, since discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

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10. In view of delays in mail delivery in recent days, we at the USPTO would like to encourage you to communicate with the USPTO via facsimile. **Facsimile transmissions may be used for correspondence as set forth in 37 CFR 1.6 such as: amendments, petitions for extension of time, authorization to charge a deposit account, an IDS, terminal disclaimers, a notice of appeal, an appeal brief, CPAs under 37 CFR 1.53(d), and RCEs.**

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PTO Form 2038 should be used when authorizing payment by credit card; this form is maintained separate from the file to ensure confidentiality.

The USPTO has recently installed server software that enables us to automatically receive facsimile transmissions and route them to the appropriate groups. No special equipment is needed by our customers to use this system other than a regular facsimile machine. Each Technology Center has its own facsimile numbers associated with our server for Official replies to non-final Office actions and for Official replies to final Office actions. In addition, each Technology Center has a Customer Service Center on our server system and can answer any general application status questions you might have, can provide Examiner information and answer paper queries.

The following is a list of all Official Facsimile numbers for Technology Center 3600:

TC 3600:

Before Final 703-872-9326

After Final 703-872-9327

Customer Service 703-872-9325

By using the Official Before Final and After Final numbers, our server system will automatically generate a return receipt that will include the number of pages received as well as the date and time the facsimile was received. Additionally, the return receipt will include an image of the received cover page. Applicants are advised to use the certificate of facsimile transmission procedures when submitting a reply to a non-final or final Office action by facsimile (see 37 CFR

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1.6 and 1.8). Applicants are also advised to retain the return receipt in the event that the Office has no record of the facsimile submission, whether the facsimile submission is a reply to an Office action (37 CFR 1.8(b)), or a continued prosecution application under 37 CFR 1.53(d)) (37 CFR 1.6(f)).

**Note, however, the Office currently does not permit new application filings (other than a CPA under 37 CFR 1.53(d)), requests for reexamination, drawings, and certain correspondence set forth in 37 CFR 1.6(d) by facsimile.**

*Conclusion*

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The art cited shows various structures similar to Applicant's.

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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea Chop whose telephone number is (703) 305-6358.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

*Andrea Chop*  
ANDREA CHOP  
PATENT EXAMINER  
Art Unit 3677

AMC  
November 15, 2002